

AMENDED IN SENATE MAY 29, 2012

AMENDED IN SENATE MAY 15, 2012

AMENDED IN SENATE APRIL 19, 2012

AMENDED IN SENATE APRIL 16, 2012

AMENDED IN SENATE APRIL 9, 2012

SENATE BILL

No. 1094

Introduced by Senator Kehoe

February 16, 2012

An act to amend Sections 65965, 65966, 65967, and 65968 of the Government Code, relating to land use, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1094, as amended, Kehoe. Land use: mitigation lands: nonprofit organizations.

(1) The Planning and Zoning Law provides that if a state or local agency requires a person to transfer to that agency an interest in real property to mitigate the environmental impact of a project or facility, that agency may authorize specified entities to hold title to, and manage that interest in, real property, as well as any accompanying funds, provided those entities meet specified requirements. Existing law requires that if accompanying funds, as defined, are conveyed at the time the property is protected, then the holder of those accompanying funds must meet specified requirements. Existing law requires a state or local agency to exercise due diligence in reviewing the qualifications of a special district or nonprofit organization to effectively manage and

steward land, water, or natural resources, as well as the accompanying funds.

This bill would use the term “endowment” instead of “accompanying funds.” This bill would authorize an agency, in connection with the provisions described above, to also permit a governmental entity, as defined, to hold title to, and manage that interest in, real property, as well as any endowment. This bill would remove the requirement that a state or local agency exercise due diligence in reviewing the qualifications of a special district or nonprofit organization to effectively manage the endowment. This bill would also modify the requirements that the holder of an endowment must meet, and would provide that those requirements also apply to endowments that are secured at the time the property is protected.

(2) Existing law authorizes a state or local agency, if that agency authorizes specified entities to hold property pursuant to these provisions, to require an administrative endowment from the project proponent to cover reasonable costs to the agency.

This bill would revise that provision to authorize a ~~state or local~~ agency to *require the project proponent to pay a one-time fee that does not exceed the reasonable costs of the agency in reviewing qualifications of potential holders of the property, approving those holders, and any regular oversight over those holders to ensure that the holders are complying with all applicable laws. The bill would also authorize a local agency to require a project proponent to pay a one-time fee that does not exceed the reasonable costs of the agency in reviewing qualifications of the parties to the mitigation agreement, approving those holders, and any regular oversight over those holders to ensure that the holders are complying with all applicable laws.*

(3) Existing law provides that if a state or local agency, in the development of its own project, is required to mitigate an adverse impact upon natural resources, that agency may take any action it deems necessary to meet its mitigation obligations, including, among others, transferring an interest in the property to specified entities.

This bill would additionally authorize a state or local agency to hold an endowment in an account administered by an elected official.

(4) Existing law generally requires that the accompanying funds described above be held by the agency that requires the mitigation or by the special district or nonprofit organization that holds the property. Existing law excepts certain situations from this requirement, including, among others, if the accompanying funds are held by another entity

pursuant to a natural community conservation plan or a safe harbor agreement that is executed on or before January 1, 2012.

This bill would require that, in order to qualify for that exception, the implementation agreement would be required to meet certain requirements. This bill also would modify the exceptions to that requirement by adding some and removing others, including, among other changes, adding exceptions that would authorize a community foundation, as defined, or a congressionally chartered foundation to hold an endowment if specified conditions are met.

This bill would authorize a state or local agency to allow the endowments to be temporarily held in an escrow account until a specified date, after which time the bill would require the state or local agency to transfer the endowments to the entity that will permanently hold them.

This bill would also make technical, nonsubstantive changes to those provisions.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature, and in the best
2 interest of the public, that there is available a diversified pool of
3 eligible entities that are qualified to do business in California,
4 based in California, and that meet the requirements of this chapter
5 to hold, manage, invest, and disburse endowment funds in
6 furtherance of the long-term stewardship of the property set aside
7 for mitigation purposes.

8 SEC. 2. Section 65965 of the Government Code is amended
9 to read:

10 65965. For the purposes of this chapter, the following
11 definitions apply:

12 (a) "Endowment" means the funds that are conveyed solely for
13 the long-term stewardship of a mitigation property. Endowment
14 funds are held as charitable assets that are permanently restricted
15 to paying the costs of long-term management and stewardship of
16 the mitigation property for which the funds were set aside.
17 Endowments shall be governed by the underlying laws and

1 regulations pursuant to which the endowments were exacted, and
2 otherwise held consistent with subdivision (b) of Section 65966
3 and with the Uniform Prudent Management of Institutional Funds
4 Act (Part 7 (commencing with Section 18501) of Division 9 of the
5 Probate Code). Endowments do not include funds conveyed for
6 meeting short-term performance objectives of a project.

7 (b) “Community foundation” means any community foundation
8 that meets all of the following requirements:

9 (1) Meets the requirements of a community trust under Section
10 1.170A-9(f)(10)-(11) of Title 26 of the Code of Federal
11 Regulations.

12 (2) Is exempt from taxation as an organization described in
13 Section 501(c)(3) of the Internal Revenue Code.

14 (3) Is qualified to do business in this state.

15 (4) Is a “qualified organization” as defined in Section 170(h)(3)
16 of the Internal Revenue Code.

17 (5) Has complied with National Standards for U.S. Community
18 Foundations as determined by the Community Foundations
19 National Standards Board, a supporting organization of the Council
20 on Foundations.

21 (6) *Is registered with the Registry of Charitable Trusts*
22 *maintained by the Attorney General pursuant to Section 12584.*

23 (c) “Conservation easement” means a conservation easement
24 created pursuant to Chapter 4 (commencing with Section 815) of
25 Title 2 of Part 2 of Division 2 of the Civil Code.

26 (d) “Direct protection” means the permanent protection,
27 conservation, and preservation of lands, waters, or natural
28 resources, including, but not limited to, agricultural lands, wildlife
29 habitat, wetlands, endangered species habitat, open-space areas,
30 or outdoor recreational areas.

31 (e) “Governmental entity” means any state agency, office,
32 officer, department, division, bureau, board, commission, city,
33 county, or city and county, or a joint powers authority formed
34 pursuant to the Joint Exercise of Powers Act (Chapter 5
35 (commencing with Section 6500) of Division 7 of the Government
36 Code) that was created for the principal purpose and activity of
37 the direct protection or stewardship of land, water, or natural
38 resources, including, but not limited to, agricultural lands, wildlife
39 habitat, wetlands, endangered species habitat, open-space areas,
40 and outdoor recreational areas.

1 (f) “Mitigation agreement” means a written agreement between
2 a state or local agency, the project proponent, and the governmental
3 entity, special district, nonprofit organization, for-profit entity, or
4 other entity that holds the property. A mitigation agreement governs
5 the long-term stewardship of the mitigation property and an
6 endowment.

7 (g) “Congressionally chartered foundation” means a nonprofit
8 organization that meets all of the following requirements:

9 (1) Is chartered by the United States Congress.

10 (2) Is exempt from taxation as an organization described in
11 Section 501(c)(3) of the Internal Revenue Code.

12 (3) Is qualified to do business in this state.

13 (4) Is registered with the Registry of Charitable Trusts
14 maintained by the Attorney General pursuant to Section 12584.

15 (5) Has as a purpose the conservation and management of fish,
16 wildlife, plants, and other natural resources, which includes, but
17 is not limited to, the direct protection or stewardship of land, water,
18 or natural wildlife habitat, wetlands, endangered species habitat,
19 open-space areas, and outdoor recreational areas.

20 (h) “Nonprofit organization” means any nonprofit organization
21 that meets all of the following requirements:

22 (1) Is exempt from taxation as an organization described in
23 Section 501(c)(3) of the Internal Revenue Code.

24 (2) Is qualified to do business in this state.

25 (3) Is a “qualified organization” as defined in Section 170(h)(3)
26 of the Internal Revenue Code.

27 (4) Is registered with the Registry of Charitable Trusts
28 maintained by the Attorney General pursuant to Section 12584.

29 (5) Has as its principal purpose and activity the direct protection
30 or stewardship of land, water, or natural resources, including, but
31 not limited to, agricultural lands, wildlife habitat, wetlands,
32 endangered species habitat, open-space areas, and outdoor
33 recreational areas.

34 (i) “Project proponent” means an individual, business entity,
35 agency, or other entity that is developing a project or facility and
36 is required to mitigate any adverse impact upon natural resources.

37 (j) “Property” means fee title land or any partial interest in real
38 property, including a conservation easement, that may be conveyed
39 pursuant to a mitigation requirement by a state or local agency.

1 (k) “Special district” means any of the following special
2 districts:

3 (1) A special district formed pursuant to Article 3 (commencing
4 with Section 5500) of Chapter 3 of Division 5 or Division 26
5 (commencing with Section 35100) of the Public Resources Code.

6 (2) A resource conservation district organized pursuant to
7 Division 9 (commencing with Section 9001) of the Public
8 Resources Code.

9 (3) A district organized or formed pursuant to the Metropolitan
10 Water District Act (Chapter 209 of the Statutes of 1969).

11 (4) A county water district organized under Division 12
12 (commencing with Section 30000) of the Water Code, that has
13 more than 5,000 acres of mitigation lands.

14 (5) A special district formed pursuant to Chapter 2 (commencing
15 with Section 11561) of Division 6 of the Public Utilities Code that
16 provides water and wastewater treatment services.

17 (6) A district organized or formed pursuant to the County Water
18 Authority Act (Chapter 545 of the Statutes of 1943).

19 (l) “Stewardship” encompasses the range of activities involved
20 in controlling, monitoring, and managing for conservation purposes
21 a property, or a conservation or open-space easement, as defined
22 by the terms of the easement, and its attendant resources.

23 SEC. 3. Section 65966 of the Government Code is amended
24 to read:

25 65966. (a) Any conservation easement created as a component
26 of satisfying a local or state mitigation requirement shall be
27 perpetual in duration, whether created pursuant to Chapter 6.6
28 (commencing with Section 51070) of Part 1 of Division 1 of Title
29 5 of this code or Chapter 4 (commencing with Section 815) of
30 Title 2 of Part 2 of the Civil Code.

31 (b) Any local or state agency that requires property to be
32 protected pursuant to subdivision (a) or (b) of Section 65967 may
33 identify how the funding needs of the long-term stewardship of
34 the property will be met. If an endowment is conveyed or secured
35 at the time the property is protected, all of the following shall
36 apply:

37 (1) The endowment shall be held, managed, invested, and
38 disbursed solely for, and permanently restricted to, the long-term
39 stewardship of the specific property for which the funds were set
40 aside.

1 (2) The endowment shall be calculated to include a principal
2 amount that, when managed and invested, is reasonably anticipated
3 to cover the annual stewardship costs of the property in perpetuity.

4 (3) The endowment shall be held, managed, invested, disbursed,
5 and governed as described in subdivision (a) of Section 65965
6 consistent with the Uniform Prudent Management of Institutional
7 Funds Act (Part 7 (commencing with Section 18501) of Division
8 9 of the Probate Code).

9 (c) If a nonprofit corporation holds the endowment, the nonprofit
10 shall utilize generally accepted accounting practices that are
11 promulgated by the Financial Accounting Standards Board or any
12 successor entity.

13 (d) If a local agency holds the endowment, the local agency
14 shall do all of the following:

15 (1) Hold, manage, and invest the endowment consistent with
16 subdivision (b) to the extent allowed by law.

17 (2) Disburse funds on a timely basis to meet the stewardship
18 expenses of the entity holding the property.

19 (3) Utilize accounting standards consistent with standards
20 promulgated by the Governmental Accounting Standards Board
21 or any successor entity.

22 (e) (1) Unless the mitigation agreement provides otherwise, a
23 governmental entity, community foundation, special district, a
24 congressionally chartered foundation, or a nonprofit organization
25 that holds funds pursuant to this chapter, including an endowment
26 or moneys for initial stewardship costs, shall provide the local or
27 state agency that required the endowment with an annual fiscal
28 report that contains at least the following elements with respect to
29 each individual endowment dedicated on a property-by-property
30 basis and held by that entity:

31 (A) The balance of each individual endowment at the beginning
32 of the reporting period.

33 (B) The amount of any contribution to the endowment during
34 the reporting period including, but not limited to, gifts, grants, and
35 contributions received.

36 (C) The net amounts of investment earnings, gains, and losses
37 during the reporting period, including both realized and unrealized
38 amounts.

1 (D) The amounts distributed during the reporting period ~~for~~
2 ~~facilities and programs~~ that accomplish the purpose for which the
3 endowment was established.

4 (E) The administrative expenses charged to the endowment
5 from internal or third-party sources during the reporting period.

6 (F) The balance of the endowment or other fund at the end of
7 the reporting period.

8 (G) The specific asset allocation percentages including, but not
9 limited to, cash, fixed income, equities, and alternative investments.

10 (H) The most recent financial statements for the organization
11 audited by an independent auditor who is, at a minimum, a certified
12 public accountant.

13 (2) If an entity is required to submit an identical annual fiscal
14 report pursuant to paragraph (1) to the Department of Fish and
15 Game and any other state or local agency, then that report shall be
16 provided only to the Department of Fish and Game. In that
17 instance, the Department of Fish and Game shall provide a copy
18 of that annual fiscal report on its Internet Web site for a minimum
19 of five years.

20 (f) If a state ~~or local~~ agency authorizes a governmental entity,
21 special district, or nonprofit organization to hold property pursuant
22 to subdivision (a) or (b) of Section 65967 in connection with a
23 development project, the agency may require the project proponent
24 to pay a one-time fee that does not exceed the reasonable costs of
25 the agency in reviewing qualifications of potential holders of the
26 property, approving those holders, and any regular oversight over
27 those holders to ensure that the holders are complying with all
28 applicable laws. *This one-time fee shall be collected only if the*
29 *agency can demonstrate its actual review of qualifications,*
30 *approval of holders, or regular oversight of compliance and*
31 *performance.*

32 (g) *If a local agency authorizes a governmental entity, special*
33 *district, or nonprofit organization to hold property or an*
34 *endowment pursuant to this chapter, the agency may require the*
35 *project proponent to pay a one-time fee that does not exceed the*
36 *reasonable costs of the agency in reviewing qualifications of the*
37 *parties identified in the mitigation agreement, approving those*
38 *parties, and any regular oversight over those parties to ensure*
39 *that the parties are complying with all applicable laws. This*
40 *one-time fee shall be collected only if the agency can demonstrate*

1 *its actual review of qualifications, approval of parties, or regular*
2 *oversight of compliance and performance.*

3 ~~(g)~~

4 (h) A local agency may require a project proponent to provide
5 a one-time payment that will provide for the initial stewardship
6 costs for up to three years while the endowment begins to
7 accumulate investment earnings. The funds for the initial
8 stewardship costs are distinct from the funds that may be conveyed
9 for long-term stewardship, construction, or other costs. If there are
10 funds remaining at the completion of the initial stewardship period,
11 the funds shall be conveyed to the project proponent.

12 ~~(h)~~

13 (i) The local agency may contract with or designate a qualified
14 third party to do any of the following:

15 (1) Review the qualifications of a governmental entity, special
16 district, or nonprofit organization to effectively manage and
17 steward natural land or resources pursuant to subdivision (c) of
18 Section 65967.

19 (2) Review the qualifications of a governmental entity,
20 community foundation, or nonprofit organization to hold and
21 manage the endowment that is set aside for long-term stewardship
22 of the property.

23 (3) Review reports or other performance indicators to evaluate
24 the stewardship of lands, natural resources, or funds, and
25 compliance with the mitigation agreement.

26 ~~(i)~~

27 (j) If a property conserved pursuant to subdivision (a) or (b) of
28 Section 65967 is condemned, the net proceeds from the
29 condemnation of the real property interest set aside for mitigation
30 purposes shall be used for the purchase of property that replaces
31 the natural resource characteristics the original mitigation was
32 intended to protect, or as near as reasonably feasible. Any
33 endowment held for the condemned property shall be held for the
34 long-term stewardship of the replacement property.

35 ~~(j)~~

36 (k) Unless prohibited by law, no provision in this chapter is
37 intended to prohibit for-profit entities from holding, acquiring, or
38 providing property for mitigation purposes.

39 ~~(k)~~

1 (l) Nothing in this section shall prohibit a state agency from
2 exercising any powers described in subdivision (d), (g), or (h).

3 (~~h~~)

4 (m) A governmental entity, special district, ~~congressionally~~
5 ~~chartered foundation~~, or nonprofit organization may contract with
6 a community foundation *or congressionally chartered foundation*
7 at any time to hold, manage, and invest the endowment for a
8 mitigation property and disburse payments from the endowment
9 to the holder of the mitigation property consistent with the fund
10 agreement.

11 (~~m~~)

12 (n) The mitigation agreement shall not include any provision
13 to waive or exempt the parties from any requirement, in whole or
14 part, of this chapter.

15 SEC. 4. Section 65967 of the Government Code is amended
16 to read:

17 65967. (a) If a state or local agency requires a project
18 proponent to transfer property to mitigate any adverse impact upon
19 natural resources caused by permitting the development of a project
20 or facility, the agency may authorize a governmental entity, special
21 district, a nonprofit organization, a for-profit entity, a person, or
22 another entity to hold title to and manage that property.

23 (b) If a state or local agency, in the development of its own
24 project, is required to protect property to mitigate an adverse impact
25 upon natural resources, the agency may take any action that the
26 agency deems necessary in order to meet its mitigation obligations,
27 including, but not limited to, the following:

28 (1) Transfer the interest to a governmental entity, special district,
29 or nonprofit organization that meets the requirements set forth in
30 subdivision (c).

31 (2) Provide funds to a governmental entity, nonprofit
32 organization, a special district, a for-profit entity, a person, or other
33 entity to acquire land or easements that satisfy the agency's
34 mitigation obligations.

35 (3) Hold an endowment in an account administered by an elected
36 official provided that the state or local agency is protecting,
37 restoring, or enhancing its own property.

38 (c) A state or local agency shall exercise due diligence in
39 reviewing the qualifications of a governmental entity, special
40 district, or nonprofit organization to effectively manage and

1 steward land, water, or natural resources. The local agency may
2 adopt guidelines to assist it in that review process, which may
3 include, but are not limited to, the use of or reliance upon
4 guidelines, standards, or accreditation established by a qualified
5 entity that are in widespread state or national use.

6 (d) The state or local agency may require the governmental
7 entity, special district, or nonprofit organization to submit a report
8 not more than once every 12 months and for the number of years
9 specified in the mitigation agreement that details the stewardship
10 and condition of the property and any other requirements pursuant
11 to the mitigation agreement for the property.

12 (e) The recorded instrument that places the fee title or partial
13 interest in real property with a governmental entity, special district,
14 nonprofit organization, or for-profit entity, pursuant to subdivision
15 (a) or (b) shall include a provision that if the state or local agency
16 or its successor agency reasonably determines that the property
17 conveyed to meet the mitigation requirement is not being held,
18 monitored, or stewarded for conservation purposes in the manner
19 specified in that instrument or in the mitigation agreement, the
20 property shall revert to the state or local agency, or to another
21 public agency, governmental entity, special district, or nonprofit
22 organization pursuant to subdivision (c) and subject to approval
23 by the state or local agency. If a state or local agency determines
24 that a property must revert, it shall work with the parties to the
25 mitigation agreement, or other affected entities, to ensure that any
26 contracts, permits, funding, or other obligations and responsibilities
27 are met.

28 SEC. 5. Section 65968 of the Government Code is amended
29 to read:

30 65968. (a) Notwithstanding Section 13014 of the Fish and
31 Game Code, if an endowment is conveyed pursuant to Section
32 65966 for property conveyed pursuant to Section 65967, the
33 endowment may be held by the same governmental entity, special
34 district, or nonprofit organization that holds the property pursuant
35 to this section.

36 (b) (1) Except as permitted pursuant to paragraph (2), the
37 endowment shall be held by ~~the agency or agencies that require~~
38 one of the following:

39 (A) *The agency or agencies that required the mitigation.*

1 (B) The governmental entity, special district, or nonprofit
2 organization that either holds the property, or holds an interest in
3 the property, for conservation purposes.

4 (C) The governmental entity or special district that retains the
5 property after conveying an interest in the property for conservation
6 purposes if that governmental entity or special district is protecting,
7 restoring, or enhancing the property that was retained.

8 (2) Notwithstanding paragraph (1), an endowment may also be
9 held by the following:

10 (A) An endowment that is held by an entity other than the state
11 or holder of the mitigation property as of January 1, 2012.

12 (B) An endowment that is held by another entity, which is
13 qualified pursuant to this chapter, pursuant to the terms of a natural
14 community conservation plan (Chapter 10 (commencing with
15 Section 2800) of Division 3 of the Fish and Game Code) or a safe
16 harbor agreement (Article 3.7 (commencing with Section 2089.2)
17 of Chapter 1.5 of Division 3 of the Fish and Game Code). In order
18 for this paragraph to apply, prior to setting aside any endowments,
19 the implementation agreement that is a part of the recognized
20 natural community conservation plan or safe harbor agreement
21 shall specifically address the arrangements for the endowment
22 including, but not limited to, qualifications of the endowment
23 holder, capitalization rate, return objectives, and the spending rule
24 and disbursement policies.

25 (C) If existing law prohibits the holder of the mitigation property
26 to hold the endowment, including for-profit entities.

27 (D) If the project proponent and the holder of the mitigation
28 property or conservation easement agree that a community
29 foundation or a congressionally chartered foundation shall hold
30 the endowment.

31 (E) If the mitigation property is held or managed by a federal
32 agency.

33 (F) If any of ~~the~~ the same mitigation property is required to be
34 conveyed pursuant to both a federal and state permit, and under
35 the federal governmental approval the federal agency does not
36 approve one of the entities described in paragraph (1) of
37 subdivision (b) as chosen to hold the endowment by the agreement
38 of the project proponent and the holder of the mitigation property
39 or conservation easement.

1 (c) A community foundation or congressionally chartered
2 foundation that holds an endowment pursuant to subparagraphs
3 (A) to (F), inclusive, of paragraph (2) of subdivision (b), shall meet
4 all the qualifications and requirements of this chapter for holding,
5 managing, investing, and disbursing the endowment funds.

6 (d) Any entity that holds an endowment under this chapter shall
7 hold, manage, invest, and disburse the funds in furtherance of the
8 long-term stewardship of the property in accordance with
9 subdivision (a) of Section 65965.

10 (e) The holder of an endowment shall certify to the project
11 proponent or the holder of the mitigation property or a conservation
12 easement and the local or state agency that required the endowment
13 that it meets all of the following requirements:

14 (1) The holder has the capacity to effectively manage the
15 mitigation funds.

16 (2) The holder has the capacity to achieve reasonable rates of
17 return on the investment of those funds similar to those of other
18 prudent investors for endowment funds and shall manage and
19 invest the endowment in good faith and with the care an ordinarily
20 prudent person in a like position would exercise under similar
21 circumstances, consistent with the Uniform Prudent Management
22 of Institutional Funds Act (Part 7 (commencing with Section
23 18501) of Division 9 of the Probate Code).

24 (3) The holder utilizes generally accepted accounting practices
25 as promulgated by either of the following:

26 (A) The Financial Accounting Standards Board or any successor
27 entity for nonprofit organizations.

28 (B) The Governmental Accounting Standards Board or any
29 successor entity for public agencies, to the extent those practices
30 do not conflict with any requirement for special districts in Article
31 2 (commencing with Section 53630) of Chapter 4 of Part 1 of
32 Division 2 of Title 5 of the Government Code.

33 (4) The holder will be able to ensure that funds are accounted
34 for, and tied to, a specific property.

35 (5) If the holder is a nonprofit organization, a community
36 foundation, or a congressionally chartered foundation, it has an
37 investment policy that is consistent with the Uniform Prudent
38 Management of Institutional Funds Act (Part 7 (commencing with
39 Section 18501) of Division 9 of the Probate Code).

1 (f) If a governmental entity, community foundation, special
2 district, nonprofit organization, or a congressionally chartered
3 foundation meets the requirements of this chapter, it is qualified
4 to be a holder of the endowment for the purpose of obtaining any
5 permit, clearance, agreement, or mitigation approval from a state
6 or local agency.

7 (g) Except for a mitigation agreement prepared by a state
8 agency, the mitigation agreement that authorizes the funds to be
9 conveyed to a governmental entity, community foundation, special
10 district, a congressionally chartered foundation, or nonprofit
11 organization pursuant to subdivision (a) shall include a provision
12 that requires the endowment be held by a governmental entity,
13 special district, or a nonprofit organization to revert to the local
14 agency, or to a successor organization identified by the agency
15 and subject to subdivision (e), if any of the following occurs:

16 (1) The governmental entity, community foundation, special
17 district, a congressionally chartered foundation, or nonprofit
18 organization ceases to exist.

19 (2) The governmental entity, community foundation, special
20 district, a congressionally chartered foundation, or nonprofit
21 organization is dissolved.

22 (3) The governmental entity, community foundation, special
23 district, a congressionally chartered foundation, or nonprofit
24 organization becomes bankrupt or insolvent.

25 (4) The local agency reasonably determines that the endowment
26 held by the governmental entity, community foundation, special
27 district, or nonprofit organization, or its successor entity, is not
28 being held, managed, invested, or disbursed for conservation
29 purposes and consistent with the mitigation agreement and legal
30 requirements. Any reverted funds shall continue to be held,
31 managed, and disbursed only for long-term stewardship and benefit
32 of the specific property for which they were set aside. If the funds
33 revert from the governmental entity, community foundation, special
34 district, or nonprofit organization, the special district or nonprofit
35 organization may choose to relinquish the property. If the property
36 is relinquished, the local agency shall accept title to the property
37 or identify an approved governmental entity, community
38 foundation, special district, or nonprofit organization to accept
39 title to the property.

1 (h) Nothing in this section shall prohibit a state or local agency
2 from determining that a governmental entity, community
3 foundation, special district, a congressionally chartered foundation,
4 or nonprofit organization meets the requirements of this section
5 and is qualified to hold the endowment, or including a provision
6 in the mitigation agreement as described in subdivision (g).

7 (i) A state or local agency may allow the endowment to be held
8 temporarily in an escrow account until December 31, 2012, after
9 which time the funds shall be transferred to the entity that will
10 permanently hold the endowment.

11 (j) Subject to subdivision (g), any endowment that is conveyed
12 to and held by a governmental entity, special district, or nonprofit
13 organization pursuant to this section shall continue to be held by
14 the entity if this section is repealed.

15 (k) A state or local agency shall not require, as a condition of
16 obtaining any permit, clearance, agreement, or mitigation approval
17 from the state or local agency, that a preferred or exclusively named
18 entity by the state or local agency be named as the entity to hold,
19 manage, invest, and disburse the funds in furtherance of the
20 long-term stewardship of the property for which the funds were
21 set aside.

22 (l) This section shall remain in effect only until January 1, 2022,
23 and as of that date is repealed, unless a later enacted statute, that
24 is enacted before January 1, 2022, deletes or extends that date.

25 SEC. 6. This act is an urgency statute necessary for the
26 immediate preservation of the public peace, health, or safety within
27 the meaning of Article IV of the Constitution and shall go into
28 immediate effect. The facts constituting the necessity are:

29 In order to ensure that mitigation projects are approved in a
30 timely manner, particularly in relation to desert renewable energy
31 projects, it is necessary that this act take effect immediately.